

# Exhibit M

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - -

EVELYN L. MCKINLEY, )  
)  
Plaintiff, )  
) Civil Action  
vs. ) No. 04-222E  
)  
HONORABLE LES BROWNLEE, )  
ACTING SECRETARY OF THE ARMY, )  
)  
Defendant. )

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Deposition of LUIS L. GOMEZ, M.D.

Thursday, December 29, 2005

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The deposition of LUIS L. GOMEZ, M.D., called as a witness by the plaintiff, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Darla J. Carabotta, Notary Public in and for the Commonwealth of Pennsylvania, at the offices of Luis L. Gomez, M.D., 509 Poplar Street, Meadville, Pennsylvania 16335, commencing at 10:00 o'clock a.m., the day and date above set forth.

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COMPUTER-AIDED TRANSCRIPTION BY  
MORSE, GANTVERG & HODGE, INC.  
ERIE, PENNSYLVANIA  
814-833-1799

- - -

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- 1 Q But that military reserve affiliation would  
2 have to come with some accommodations, correct?  
3 A That's true.  
4 Q In other words, she couldn't go to the  
5 battlefield?  
6 A No, no, she couldn't  
7 Q And she couldn't drive a vehicle, get up  
8 and out of a big five ton truck?  
9 A No, she couldn't  
10 Q She couldn't bounce around in a truck?  
11 A No.  
12 Q She couldn't go to the rifle range, crouch  
13 down, and qualify with a weapon?  
14 A No.  
15 Q So there would have to be some pretty major  
16 changes to her Army position in order for her to  
17 serve?  
18 A Yes.  
19 Q Now, you mentioned that you are licensed in  
20 the State of Pennsylvania as a general -  
21 A Practice.  
22 Q General practice family physician?  
23 A I'm a physician, yes.  
24 Q Are you board certified in any discipline?  
25 A No, not on that.

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- 1 Q You're not a board certified neurosurgeon?  
2 A No.  
3 Q Not a board certified neurologist?  
4 A No.  
5 Q You're not a board certified orthopedic  
6 surgeon?  
7 A No.  
8 Q When was the last time you performed  
9 surgery?  
10 A I do minor surgeries. I still do a lot of  
11 minor surgeries in the office.  
12 Q And what type of minor surgeries are they?  
13 A Incision of lesions, little hernias, things  
14 like that. Office hours.  
15 Q Office hours, outpatient surgeries that you  
16 can perform here in your office?  
17 A Yes. I used to work a lot with the  
18 surgeons before.  
19 Q Have you ever performed a back surgery like  
20 Ms. McKinley had?  
21 A No. I did help surgeons to operate.  
22 Q So when you have patients like Ms. McKinley  
23 that have severe back problems, you refer them out to  
24 specialists?  
25 A Yes.

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- 1 Q And the reason for your referral, is  
2 because you are not a specialist in the area of the  
3 back; is that correct?  
4 A Yes.  
5 Q And Dr. Welch, he's a neurosurgeon,  
6 correct?  
7 A Yes.  
8 Q And so when counsel was taking you through  
9 all of his restrictions and opinions in that big  
10 Exhibit 4, you agreed with his writings?  
11 A Yes.  
12 Q Matter of fact, you had no basis to  
13 disagree with him, because he's an expert in that  
14 area; is that correct?  
15 A Yes, correct.  
16 Q Do you have any training in job placement  
17 or vocational expert type training?  
18 A No.  
19 Q Have you taken any classes in this area?  
20 A No.  
21 Q So your training and your CLE, continuing  
22 education requirements, is just for your general  
23 practice profession?  
24 A It sometimes include that, too. As part of  
25 the courses we take, include that, too, jobs,

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- 1 injuries.  
2 Q Does it include - like can you specify?  
3 A In general things, general courses we take  
4 when we go for meetings.  
5 Q Courses of job placement?  
6 A Job placements. Very general, not super  
7 specialized. But people that teach it, they know  
8 better than I know. It's just part of the whole  
9 thing, part of the general practice. We take it once  
10 a year, sometimes I take a course like that.  
11 Q But you said that these are just general  
12 courses -  
13 A General courses.  
14 Q - concerning perhaps what type of jobs  
15 individuals may do with what type of injuries, is that  
16 what you are saying?  
17 A They give you an idea what you could do  
18 easier to approach it the patient, take the course.  
19 Q These are geared towards your treatment of  
20 an individual?  
21 A Treatment.  
22 Q You mentioned that you didn't visit  
23 Ms. McKinley's job site; is that correct?  
24 A No, I didn't.  
25 Q Did you ever talk to anybody from the Army

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1 about these various positions?  
2 A No.  
3 Q Did you ever do any independent research  
4 about these various position descriptions that we're  
5 showing you?  
6 A No.  
7 Q Did you have any familiarity with those  
8 exact positions other than this case?  
9 A No.  
10 Q So aside from just the documents, just the  
11 actual written two or three page job description,  
12 that's all that you know about that job?  
13 A Yes. Yes.  
14 Q And that was given to you by plaintiff, or  
15 plaintiff's counsel, those job descriptions?  
16 A Yes. Yes.  
17 Q Have you had any experience working with  
18 people that held those positions at that Army  
19 institution?  
20 A No. No.  
21 Q You mentioned that you have given  
22 depositions before, have you ever testified as an  
23 expert?  
24 A No.  
25 Q What cases have you given depositions in?

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1 What type of cases?  
2 A Medical cases, nonsurgical cases.  
3 Q And they would be in your capacity as a  
4 treating physician, not an expert, correct?  
5 A Yes.  
6 Q So this is the first case in which you have  
7 testified as an expert and rendered an expert opinion?  
8 A Yes.  
9 Q Were you paid for the report that you  
10 authored, that three page report?  
11 A I don't know. I got to check my office.  
12 Q Did you charge for that type of report?  
13 A I'm not sure, I have to check with my  
14 girls, secretary. Maybe he can tell me.  
15 Q Or did you do that report for free?  
16 A A lot of times I do it for free, because  
17 it's my patient, I deserve it to the patient.  
18 Q So your testimony is you don't know if you  
19 drafted this report for free, or if you are charging?  
20 A Yes.  
21 Q Are you getting paid for your deposition  
22 here?  
23 A Yes.  
24 Q Do you know how much?  
25 A I don't know.

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1 Q Do you know how much you charge for  
2 deposition testimony?  
3 A It's so many hours. This is a long one,  
4 usually they're shorter.  
5 Q Do you charge by the hour, generally?  
6 A About a hundred dollars an hour, something  
7 like that.  
8 Q And how long have you known Ms. McKinley?  
9 A 1996.  
10 Q And is your relationship with her purely  
11 professional?  
12 A Yes.  
13 Q You have no socializing with her families,  
14 your families don't socialize at all?  
15 A No.  
16 Q And you are not the doctor that released  
17 her to light duty in 2003, that was Dr. Welch,  
18 correct?  
19 A Yes.  
20 Q And many of the medical restrictions, for  
21 instance the ten pound medical restrictions, was given  
22 by Dr. Welch, correct?  
23 A Yes, yes.  
24 Q Could you have changed that medical  
25 restriction over the - besides that written by

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1 Dr. Welch?  
2 A Not at that time, no.  
3 Q And why was that?  
4 A Some days she was improved, but this hasn't  
5 improved.  
6 Q And could the reason be that you couldn't  
7 change the restrictions because he is the expert in  
8 that area?  
9 A Yes. Yes.  
10 Q Are you aware of how Ms. McKinley got  
11 injured?  
12 A She was lifting batteries.  
13 Q Did she ever tell you that she wasn't  
14 permitted to lift batteries by herself over a certain  
15 weight limit?  
16 A No.  
17 Q Are you aware of that fact?  
18 A No.  
19 Q In your report, if you could just refer to  
20 that exhibit there. And that is exhibit - what  
21 number is that?  
22 MR. SANDERS: Exhibit No. 8.  
23 Q Exhibit No. 8. Now, did you type up this  
24 entire report?  
25 A My secretary, my words.